

HON. JUDGE RICHARD A. JONES

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

CHRISTOPHER RICHARD CHAPIN,

Plaintiff,

v.

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA, MICROSOFT
CORPORATION, and the MICROSOFT
CORPORATION WELFARE PLAN,

Defendants.

No. 2:19-cv-01256-RAJ

DECLARATION OF FRANKLIN D.
CORDELL

FRANKLIN D. CORDELL makes the following declaration based on personal
knowledge:

1. I am a partner at the firm of Gordon Tilden Thomas & Cordell, LLP, located at
600 University Street, Suite 2915, Seattle, Washington. I have been practicing law since 1991.
After serving as a law clerk to Hon. H. Emory Widener of the U.S. Court of Appeals for the
Fourth Circuit, I spent four years as an associate working in the Insurance and Litigation
practice groups in the Washington D.C. office of Covington & Burling, LLP.

DECLARATION OF
FRANKLIN D. CORDELL
(No. 2:19-cv-01256) - 1

GORDON	600 University Street
TILDEN	Suite 2915
THOMAS	Seattle, WA 98101
CORDELL	206.467.6477

I. EXPERT QUALIFICATIONS

2. I began my Washington State practice as an associate at the firm then known as Gordon Murray Tilden in 1996. I became a partner of that firm in 1998 (our firm is now known as Gordon Tilden Thomas & Cordell, LLP (“GTTC”)) and am now our Managing Partner. My CV is attached at Exhibit A to this declaration.

3. Throughout my career, my practice has been limited to business litigation, with a focus on representing policyholders in commercial insurance coverage disputes. Although I handle some non-insurance business litigation, I have practiced mainly in the insurance coverage arena since 1991. My insurance coverage practice is limited to representing policyholders and insurers that are asserting claims in the posture of a policyholder. In the latter vein, insurers have hired me to assert claims for equitable contribution against a co-insurer or claims under the insurer’s own errors and omissions insurance or reinsurance. My recent clients of this type have included PEMCO, ACE/Westchester, Association of Washington Cities, and the Washington State Transportation Insurance Pool.

4. I have handled a broad range of insurance coverage and bad faith cases over the years and have been involved in many cases that generated notable rulings in Washington. My current and former insurance coverage clients include The Boeing Company, Seattle Children’s Hospital System, Weyerhaeuser Company, Puget Sound Energy, Providence St. Joseph’s (Swedish Medical Center), Cascade Natural Gas, Advance Auto Parts, Inc., U-Haul International, Ocean Beauty Seafoods, Amgen Corp., HomeStreet, Inc., the City of Seattle, the City of Bellevue, the City of Yakima, Snohomish County, and King County.

5. I frequently write and speak to various professional organizations on insurance coverage and bad-faith topics. My CV includes a list of my publications over the past 10 years.

6. I have never testified as an expert at trial. In 2019, I gave an expert deposition in a coverage and bad faith case being litigated in federal court in Anchorage, Alaska. My expert opinions in that case had nothing to do with the reasonableness of attorneys' fees.

II. ASSIGNMENT AND WORK PERFORMED

7. I have been retained by Ruiz & Smart, PLLC ("R&S") to provide an opinion on the reasonableness of the hourly rates charged by R&S attorney McKean J. Evans. In order to develop my opinion, I reviewed the complete briefing on Mr. Chapin's Motion for Judgment on the Administrative Record and Prudential's Motion for Summary Judgment, the Court's Order Granting Mr. Chapin's Motion for Judgment and Denying Prudential's Motion for Summary Judgment, as well as Mr. Evans' declaration describing his professional qualifications and work performed in representing Mr. Chapin in this matter and the exhibits thereto. I also conducted an informal survey of the hourly rates of highly qualified attorneys representing policyholders in insurance litigation in the Seattle area.

8. I have been paid at my normal hourly rate, \$550, for my time incurred in preparing my opinions expressed in this declaration.

III. OPINIONS

9. Mr. Chapin seeks a fee award based on Mr. Evans' hourly rate of \$475. Mr. Evans' hourly rate is entirely reasonable in the Seattle market for legal representation of the type and quality provided. I reached this opinion for the following reasons.

10. As discussed above, my role as insurance coverage counsel in connection with liability insurance claims, which almost universally involve an insurer paying defense counsel's fees, has given me a broad base of knowledge of hourly rates charged by lawyers in Seattle. Also, from time to time, I am asked to review a fee application being made by policyholder

counsel, usually one made under the rule in *Olympic S.S. Co., Inc. v. Centennial Ins. Co.*, 117 Wn.2d 37, 52, 811 P.2d 673, 681 (1991). Based on this experience, I can say with confidence that Mr. Evans' rate is well within the range of reasonableness.

11. I recently conducted an informal survey of the hourly rates charged by highly qualified policyholder-side insurance coverage litigators in Seattle, including my law partners and four senior lawyers from other firms: Ian Birk of Keller Rohrbach; Michael Moore of Corr Cronin; Richard Dykstra of Friedman Rubin; Todd Hayes of Harper & Hayes; and Dale Kingman and myself of GTTC. The hourly rates charged by those lawyers range from \$630 to \$475, with only one lawyer having a rate below \$500.

12. Mr. Evans has been representing clients in litigation under the Employee Retirement Income Security Act (29 U.S.C. § 1132(a)(1)(B); "ERISA") for most of his career. ERISA litigation is almost always complex and time-intensive, and requires a high degree of skill and preparation. This work is highly specialized, and the number of ERISA attorneys in the Seattle market who are willing to undertake to represent individual clients in such matters is small.

13. Mr. Evans' briefing in this matter reflects a high degree of skill and competence. Success in this case required parsing the terms of the Microsoft benefit plan and Prudential insurance policy, the medical evidence regarding Mr. Chapin's condition, and the duties Prudential owed Mr. Chapin as an ERISA fiduciary. Prudential, represented by two large law firms, Lane Powell and Seyfarth Shaw, vigorously defended its position, asserting numerous bases for dismissing or severely limiting Chapin's claims. Mr. Evans' work was excellent and comparable to the level of work performed by the benchmark lawyers mentioned above.

1 14. I further rely on the finding of Mr. Evans' hourly rate as reasonable by multiple
2 courts. The recent orders from the Honorable Judge Keenan of King County Superior Court
3 approving Mr. Evans' hourly rate are consistent with my opinions. I also find it notable that Mr.
4 Evans' 2017 hourly rate of \$375 per hour was approved by the U.S. District Court for the
5 District of Massachusetts. In the four years since that award, the market for legal services has
6 changed substantially. The strong economy and demand for legal services caused a sharp
7 increase in hourly rates between 2017 and 2020 (prior to the pandemic), including those of my
8 firm. Accordingly, the approval of Mr. Evans' 2017 rate is consistent with the reasonableness
9 of his current rate.

10
11 **I declare under penalty of perjury of the laws of the State of Washington and the**
12 **laws of the United States of America that the foregoing is true and correct.**

13 Dated this 12th day of April, 2021 at Seattle, Washington.

14
15 
16 FRANKLIN D. CORDELL

EXHIBIT A



Franklin D. Cordell

Partner

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Profile

Frank Cordell is one of the Northwest's premier insurance recovery lawyers. He has a 27-year track record of successful engagements on behalf of policyholders engaged in coverage disputes with their insurers. Frank's policyholder clients range from multi-national corporations to small businesses and individuals. His substantive insurance experience is equally broad, ranging from the newest and most complex commercial coverage lines to high-stakes coverage disputes and bad-faith claims arising under personal-lines policies.

Frank offers a special focus on complex "long tail" claims – securing coverage for environmental property damage and asbestos liabilities resulting from business operations occurring decades ago. The work of Frank and his partners in the trial and appellate courts has played a major role in making Washington one of the most policyholder-friendly jurisdictions in the country.

In recognition of his experience, in 2017 Frank was elected a Fellow of the American College of Coverage Counsel, a nationwide, invitation-only organization of preeminent insurance coverage counsel that includes both policyholder and insurer lawyers. Frank's fellowship reflects his 27-year commitment to excellence in the field of insurance recovery. This includes vigorous and creative representation of insureds, promoting civility within the insurance coverage bar, and regularly writing and speaking on insurance topics. Frank's writing includes serving as General Editor and chapter co-author of the LexisNexis publication *Practice Guide: Washington Insurance Litigation*, a practical, step-by-step book addressing all phases of insurance litigation in Washington.

Frank also maintains an active non-insurance commercial litigation practice, including corporate governance and general contract disputes. He often serves as personal counsel to insureds being defended against lawsuits that pose risk of uninsured liability.

After graduating from law school, Frank served as law clerk to the Hon. H. Emory Widener, Jr., of the U.S. Court of Appeals for the Fourth Circuit. Before relocating to found GTTC in 1996, he was an associate with the nationally renowned insurance coverage practice of Covington & Burling in Washington, D.C. He became a name partner at GTTC in 2007.



Education

- J.D., Washington & Lee University School of Law, summa cum laude, 1991
 - Senior Lead Articles Editor, Washington & Lee Law Review, 1990 – 1991
 - Order of the Coif, 1991
 - American Jurisprudence Awards, Nine Courses, 1989 – 1991
- B.A., University of Virginia, 1988

Recognition

- Chambers USA Leading Individual -- Litigation: General Commercial, Band 4
- Listed in Best Lawyers in America®, Insurance Law, since 2013
- Martindale-Hubbell® AV® Preeminent™
- Super Lawyers Top 100: Washington Super Lawyers List, since 2009
- Recognized as a Super Lawyer, Insurance Law, since 2003
- Washington Law & Politics Magazine, "Rising Star," 1999 and 2001
- Fellow, American College of Coverage Counsel, 2017— www.americancollegecec.org

Representative Matters

Outside-the-playbook approach to major environmental coverage claim

Frank Cordell represented aerospace giant McDonnell Douglas Corporation in its first environmental coverage litigation in the mid-1990s. He resumed that engagement in 2009, when MDC was a subsidiary of The Boeing Company. MDC had incurred substantial liability for the cleanup of numerous manufacturing sites across North America. The company's resulting coverage claim was one of the largest ever presented to MDC's principal insurer, Lloyd's and the London Market.

Rather than following the typical "playbook," in rote fashion, and embarking on a second round of costly coverage litigation, Boeing and Lloyd's reached a standstill agreement and proceeded to negotiate in a structured, orderly fashion. After five years of hard-fought negotiations, the parties reached a confidential settlement. This is one of dozens of substantial long-tail coverage matters that Frank's clients have settled on favorable terms without bearing the enormous costs and risks of coverage litigation.

Coverage counsel to Snohomish County after Oso landslide tragedy

On March 22, 2014 a massive landslide killed 43 people in the Steelhead Haven neighborhood near the community of Oso in Snohomish County, Washington. In the aftermath, victims and their families filed dozens of wrongful death claims against three defendants, including Snohomish County. These claims were consolidated in King County into the State's largest-ever wrongful death action. Frank Cordell was selected to represent the County as coverage counsel, and, along with Chelsey Mam and Greg Pendleton, currently is prosecuting litigation against the insurers in federal court in Seattle.



Coverage counsel to Weyerhaeuser Company

For nearly 30 years, GTTC's lawyers have served as coverage counsel to iconic Northwest business Weyerhaeuser Company. Frank Cordell has been lead counsel to Weyerhaeuser in a wide variety of coverage matters, including long-tail claims. Along with Susannah Carr, he currently represents the company in litigation against the London Market, AIG and other insurers over coverage for liability arising out of the Kalamazoo River Superfund Site – one of the largest and most costly Superfund sites in history.

Bad-faith litigation on behalf of a public biopharmaceutical company

In 2009, the CFO of a publicly traded, Seattle-based biopharmaceutical company filed suit, alleging that he had been wrongfully terminated. After the company's liability insurer failed to provide sufficient authority to settle the CFO's action, the company asserted claims for bad faith against the insurer. Represented by Frank Cordell and Michael Rosenberger, the company entered into a confidential settlement shortly before trial.

Successful shareholder derivative case challenging board self-dealing

Michael Rosenberger and Frank Cordell successfully represented a local biotech company against its former insurer. When the company's former CFO sued the client claiming he was wrongfully terminated, the insurer refused to make an offer that could have settled the case below policy limits. The client later had to settle for an amount substantially above policy limits, which settlement the insurer refused to pay.

The insurer brought suit seeking a declaration of no coverage, and our client counterclaimed for breach of contract, bad faith and violation of the Washington Insurance Fair Conduct Act. The case settled on confidential terms on the eve of trial.

Insurer must pay under D&O policy in bankruptcy court

DBSI is a former real estate investment company whose directors and officers were pursued on various securities and other claims throughout the country. Haley Krug and Frank Cordell successfully represented the company's chief executive officer in insurance litigation taking place in Delaware Bankruptcy Court, obtaining coverage for the individual's defense over the objection of the company's insurers.

Precedent-setting environmental insurance recovery case

Gull Industries, a longtime Seattle-based gasoline distributor, faced environmental clean-up obligations for 220 gas stations. When Gull sought to recover the cost of these clean-ups, which it undertook voluntarily, from various insurers under its CGL policies, the insurers denied the claims. Frank Cordell and Susannah Carr (along with co-counsel at Marten Law) engaged in a multi-phase case to recover the insurance proceeds. In 2014, in the first trial, a King County Superior Court jury returned a verdict in favor of Gull. Issues in this ongoing "master class" environmental case include the effect of non-cumulation clauses, reconstruction of lost policies from years ago based on fragmentary evidence, and prevailing against the insurers' "expected or intended" policy language defense.



Insurance policies help with costly environmental clean-up

Simpson Timber Co. is listed as one of the parties liable for cleanup of the 250-acre Pasco Sanitary Landfill – a large Superfund site. Simpson turned to GTTC for assistance. After a careful review of Simpson's insurance policies, Frank Cordell and Michael Brown have recovered insurance proceeds covering the full amount of Simpson's costs to date.

City turns to insurer to help pay largest land use verdict in state history

In 2004, a developer proposed building a parking garage on land it owned. Over the ensuing years, the city in which the land is located was alleged to have frustrated the developer's efforts. The city eventually took title to the land through a deed in lieu of foreclosure transaction. The developer later sued the city. In 2016, after more than three years of litigation, the King County Superior Court awarded \$18.3 million to the developer – reportedly the largest land use judgment in the history of Washington State. The city appealed the verdict. Frank Cordell and Greg Pendleton successfully represented the city in a parallel insurance coverage case in federal court.

Amicus counsel for the Association of General Contractors of Washington

GTTTC lawyers Frank Cordell and Greg Pendleton prepared a successful *amicus curiae* brief on behalf of the Association of General Contractors in *T-Mobile USA, Inc. v. Selective Insurance Company of America*. The case asked whether "an insurer was bound by representations made by its authorized agent in a certificate of insurance with respect to a party's status as an additional insured under a policy issued by the insurer, when the certificate includes language disclaiming its authority and ability to expand coverage." The Washington Supreme Court answered in the affirmative. The issue was of considerable importance to Washington's construction industry because certificates of insurance are routinely relied upon as evidence of compliance with contractual insurance requirements.

Professional and Civic Involvement

Board Member, [Sight Connection—For the Blind and Partially Sighted](#)

Publications and Presentations

- Co-Author, "Eight Things Every U.S. Insurance Coverage Lawyer Should Know About Lloyd's and the London Market," in *The Brief*, Volume 46, Number 2, Winter 2017
- Volume Editor and Author of Chapters 4 and 6 "Insured's Duties," *Washington Insurance Litigation Practice Guide* (Lexis-Nexis 2016-17 ed.)
- Author, Chapter 20, "Conditions and Insured's Duties," in *New Appleman on Insurance Law – Library Edition*, 2013
- Co-Author, with Christie L. Snyder, of Chapter 9, "Determining the Duties of the Policyholder," in *Appleman Insurance Law and Practice Guide*, 2007
- Speaker, The Primary Dilemma, Excess Insurer Rights and Risks, ABA Tort Trial Insurance Section, Insurance Coverage Litigation Committee Mid-Year Meeting, February 24, 2017, Phoenix, Arizona
- Chair and Speaker, The A to Z Guide to the London Market, ABA Tort Trial Insurance Section, Insurance Coverage Litigation Committee Mid-Year Meeting, February 20, 2016, Phoenix, Arizona



- Co-Chair, All Sums, Reallocation & Settlement Credits, October 21, 2009, Philadelphia, Pennsylvania
- Co-Chair, Mealey's Insurance: All Sums Versus Pro-Rata Allocation, Methods of Exhaustion, Reallocation and Settlement Credits, October 15, 2007, Washington, D.C.
- Co-Chair, Program Committee and Program Author, The Mock Trial as Settlement Device and Trial-Preparation Tool, ABA Section of Litigation Annual Meeting, April 1998, and ABA Section of Litigation, Insurance Coverage Litigation Committee Mid-Year Meeting, February 1998
- Approximately 25 additional speaking engagements in Seattle and around the county, on a wide range of insurance topics

Personal

In 1996 my partner Jeff Tilden showed me a quote from Ralph Waldo Emerson: "Nothing astonishes men so much as common sense and plain dealing." This quote—and the fact that Jeff practiced what he preached every day—had a powerful effect on me. It helped me understand that no short-term, expedient benefit is worth the risk of long-term harm, either to my client or my own reputation. In the long run, your reputation is all you have.

In my spare time, I enjoy cycling, striving mightily to be mediocre at CrossFit and golf, hiking with my family in the Cascades, planning trips and traveling with my history-teacher wife and history-geek 13-year-old daughter, and wine—not necessarily in that order.